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EXAMINER

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2187

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Technology Center 2100

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/618,213
Filing Date: July 11, 2003
Appellant(s): CHILDS ET AL.

Robert A. Voigt, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed January 18, 2007 appealing from the Office action mailed October 27, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

The following is a listing of the evidence (e.g. patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

Symantec Corporation, "Norton Ghost User's Guide", (1998-2001), p. 1-124.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Symantec Corporation (Norton Ghost User's Guide), hereafter referred to as Symantec.

Regarding claim 1, Symantec teaches a backup system for a computer having a hard drive [pages 9-10] comprising: a program appliance comprising a program attachable in data communication with the computer[boot floppy for floppy drive; pages 11 and 16-17] and a data storage appliance attachable in data communication with the computer [e.g., CD-ROM, pages 19, 10], wherein the program is configured to copy the files from the hard drive to the data storage appliance without installation of the program on the hard drive [the ghost executable is not installed/copied onto any hard drive or partition; the ghost executable is only stored in the boot partition of the boot device (ghost executable found on boot floppy); pages 11, 126, and 26-30

Regarding claim 2, Symantec teaches wherein the program appliance and the data storage appliance are the same appliance [Consider a computer with two hard drives, the first containing the data to be backed up, while the second contains two partitions where the first partition comprises the ghost executable (page 11) and the second partition is empty. The second hard drive is interpreted as both the program appliance and data storage appliance. The executable is executed from the first partition of the second drive, the source is selected to be the first hard drive, and the destination location for the backup files is selected to be that of the second partition of the second drive [page 28-20]. Thus, Symantec teaches the claim limitations as recited. Neither appliance is claimed to be prohibited from being located with the computer. Also, one of ordinary skill in the art would recognize that the second hard drive could be located in an external enclosure connected to the computer via a USB network, and that the ghost executable could be booted from the external hard drive].

Regarding claim 3, Symantec teaches wherein the program is further configured to execute automatically upon the program appliance being attached to the computer [in accordance with user selection of the Applicant (para 0033), the ghost executable executes automatically after the computer has been set to boot from the floppy; page 26].

Regarding claim 4, Symantec teaches wherein the program is further configured to copy the files from the data storage appliance to the hard drive without

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installation of the program on the hard drive [pages 31-32; as noted above, the image file may be stored on a CD-R/RW in the CD-ROM; pages 36 & 39].

Regarding claim 5, Symantec teaches a network [page 100] in data communication with the computer [page 42]; and a server computer [master] in data communication with the network, wherein the data communication between the data storage appliance and the computer is provided through the server [page 34, "peer-to-peer", page 42, page 99-101].

Regarding claim 6, Symantec teaches wherein the program is further configured to copy the files from the data storage appliance to the hard drive without installation of the program on the hard drive [pages 31-32; as noted above, the image file may be stored on a CD-R/RW in the CD-ROM; pages 36 & 39].

Regarding claim 7, Symantec teaches wherein the program is further configured to execute automatically upon the program appliance being attached to the computer [in accordance with user selection of the Applicant (para 0033), the ghost executable executes automatically after the computer has been set to boot from the floppy; page 26].

(10) Response to Argument

Regarding Applicant's argument on page 3, paragraph 1, the Examiner agrees with Applicant's assertion that the Norton Ghost program includes a Ghost Boot Wizard for creating boot disks that start automatically when the computer is turned on.

Regarding Applicant's argument on page 3, paragraph 2, the Examiner disagrees with Applicant's assertion that a boot disk is not a program appliance. As found on page 6, lines 2-3 of Applicant's Specification:

The program appliance 207 may be one of several types of appliances, so long as the appliance 207 provides for at least read-only storage.

One of ordinary skill in the art would recognize that a floppy disk functions in a read-only manner by merely sliding the 'read-only' tab, found in the upper left corner of the reverse side of the disk, into the opposite position. Therefore Symantec teaches a program appliance in accordance with Applicant's Specification.

Regarding Applicant's argument on page 3, paragraph 3, the Examiner disagrees with Applicant's assertion that the CD-ROM of Symantec cannot be interpreted as "a data storage appliance attachable in data communication with the computer". The Applicant has disclosed "...that boot disks with CD-ROM support let you access images stored on the CD-ROM" (page 3, paragraph 3). The Examiner agrees that Norton Ghost can create a copy of the hard disk as well as create boot disks with CD-ROM support in order to access images stored on the CD-ROM drive's CD-R discs. However, the Applicant has failed to disclose how a CD-ROM may not be interpreted as

"a data storage appliance attachable in data communication with the computer". One of ordinary skill in the art would recognize that CD-ROM devices are often attached to a computer system via parallel IDE ribbon cables, where these ribbon cables transfer data between the CD-ROM and computer system. In order for an image on a CD-R disc in the CD-ROM to be accessed, data communication with the computer must be required. Therefore, a CD-ROM drive as taught by Symantec may be interpreted as the "...data storage appliance attachable in data communication with the computer" as claimed.

Regarding Applicant's argument beginning on page 4, paragraph 1 and continuing through page 5, the Examiner disagrees with Applicant's assertion that the Symantec reference fails to teach "...wherein the program is configured to copy the files from the hard drive to the data storage appliance without installation of the program on the hard drive". Also, the Applicant further asserts that the Ghost Boot Wizard creates boot disks that start when the computer is turned on. First, the Examiner agrees with the Applicant that Norton Ghost can create boot disks that start Norton Ghost when the computer is turned on. Regarding Applicant's arguments on pages four through five regarding the assertion that the limitation of "...wherein the program is configured to copy the files from the hard drive to the data storage appliance without installation of the program on the hard drive", the Examiner will next detail how the Symantec reference teaches this claim limitation.

To support Applicant's argument regarding the aforementioned claim limitation, Applicant argues in the first paragraph of page five that the Norton Ghost software is

installed onto the hard drive of the computer. The Examiner agrees that the software is installed on the hard drive, and that even a copy of the executable program relied upon for copying data, Ghostpe.exe, is also installed onto the hard drive as part of the software installation process. However, this software installed onto the hard drive may be used for two purposes. A first purpose is that Norton Ghost may be executed within the Operating System to back up data using the data installed on the hard drive.

Symantec discloses that this is not a viable option for creating true duplicate images because numerous may not be imaged according to their true size and that the Norton Ghost executable may fail when trying to overwrite numerous other files (Symantec, page 25).

Therefore, Symantec recommends using this installed software for a second purpose, that to create boot disks such that the Norton Ghost executable, also found on the boot disk (Symantec, page 16, "Ghostpe.exe"; see also page 11, "Norton Ghost executable"), may be run completely and independently from the boot disk. These boot disks are self-contained and may include network and CD-ROM access functionality (Symantec, p. 11, 16-19). By executing the program (Ghostpe.exe) from the program appliance (boot disk), files on the hard disk, including those related to Norton Ghost, are not executed in order to perform the copying of files from the hard drive to the "data storage appliance". Therefore the copy of the program (Ghostpe.exe), found on the program appliance (boot disk), and executed upon computer start-up, is the program found in claim 1, where "...the program is configured to copy the files form the hard drive to the data storage appliance without installation of the program on the hard drive".

Furthermore, although it could be argued that a copy of the ghost executable (Ghostpe.exe) exists on both the floppy disk (program appliance) and hard disk, execution of the Ghostpe.exe executable for copying data between the program storage appliance and hard drive does not include the installation of the program (Ghostpe.exe) onto the hard drive, for it already exists on the hard drive. The only copy of the executable that is executed is found on the floppy disk (program appliance). Thus, the Ghospe.exe executable (program) found on the floppy disk (program appliance) is executed to copy data between the data storage appliance and the hard drive, as claimed.

Regarding claim 2, the Applicant argues on pages 5-7 that the Symantec reference fails to recite "wherein the program appliance and the data storage appliance are the same appliance". The Examiner disagrees. The Examiner had attempted to explain, for the sake of clarity, an instance in which the program appliance and the data storage appliance would be the same appliance. As seen on page 27 of the Symantec reference, using Norton Ghost requires the use of selecting not only a source hard disk or partition, but also a destination hard disk *or partition* (emphasis added). All hard disks, boot disks, or CD-R/RW's include at least one partition, which is the minimum requirement to enable data storage. Therefore, any partition(s) known to the computer will be available for data storage of the cloned data or data image. Thus, a boot disk (program appliance), hard disk, or CD-R/RW in the CD-ROM (data storage appliance) with a second partition not containing the program will be made available by the

computer for data storage backup by the program. Consequently, the program appliance, from which the program was executed, is available for storage of the copied files as the designated 'data storage appliance' in accordance with the teachings of Symantec and teaches the subject matter as claimed.

Regarding claim 3, the Applicant argues on pages 7-8 that the Symantec reference fails to recite "wherein the program is further configured to execute automatically upon the program appliance being attached to the computer". The Applicant appears to contend that the program is executed just after the program appliance has been attached to the computer. In essence, the Applicant has argued that the program executes not just automatically, but *immediately*, after the program appliance has been attached to the computer (emphasis added). The Examiner would like to point out that such an interpretation would introduce a timeline into the claim interpretation, where on its face claim 3 recites that the program is executed automatically but does not recite a time-related limitation. The program of Symantec is executed automatically when the computer is started, where the boot disks (program appliances) had been previously inserted into the computer (Symantec. p. 26), as previously recited in Examiner's Office Action. Thus the Symantec reference teaches the limitations as claimed.

Regarding claim 4, the Applicant argues on page 9 that the Symantec reference fails to recite "...wherein the program is further configured to copy the files from the data

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storage appliance to the hard drive without installation of the program on the hard drive". The Examiner agrees with the Applicant's assertion that Symantec teaches cloning a partition from an image file. This image file was saved onto a CD-R/RW in a CD-ROM drive (data storage appliance; see also Examiner's arguments disclosed supra regarding claim 1) (Symantec, p. 38) such that the image on the CD-R/RW can be loaded onto a hard drive at any time (Symantec, p. 31). The copying of data from the hard disk to the CD-R/RW disk in the CD-ROM (data storage appliance) (claim 1), and the copying of data from the CD-R/RW disk in the CD-ROM (data storage appliance) to the hard disk, are both performed by the program (Ghostpe.exe) that is automatically loaded at startup by the computer. As stated previously by the Examiner in reference to claim 1, this program is executed from the program appliance (boot disk) for copying data between the hard disk and the data storage appliance without the installation of a copy of itself to the hard disk. Thus the Symantec reference teaches the limitations as claimed.

Regarding claim 5, the Applicant argues on pages 9-10 that the Symantec reference fails to recite "a network in data communication with the computer; and a server computer in data communication with the network, wherein the data communication between the data storage appliance and the computer is provided through the server". The Examiner disagrees. As recited by the Examiner in the previous Office Action, Symantec teaches where at least two computers are connected via Ethernet cables and network interface cards (page 100), such that data image files

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and partitions and drives may be shared between the two (page 99). Symantec teaches that a master (server) computer is designated such that all user input, including that of data communication between the data storage appliance (CD-ROM with CR-R/RW, which qualifies as a drive according to Symantec, p. 99) and the computer (the user can control the movement of data images between drives and partitions) is provided through the master (server). Thus the Symantec reference teaches the limitations as claimed. Please note the chart of actions that the master computer performs with a slave computer on page 99 of the Symantec reference.

Regarding claim 6, the Applicant argues on pages 10-11 that the Symantec reference fails to recite "a network in data communication with the computer; and a server computer in data communication with the network, wherein the data communication between the data storage appliance and the computer is provided through the server". The Applicant makes the same arguments for claim 6 that were previously recited for claim 4. Therefore, the Examiner will recite the same Symantec recitations that teach the subject matter as claimed. The Examiner agrees with the Applicant's assertion that Symantec teaches cloning a partition from an image file. This image file was saved onto a CD-R/RW in a CD-ROM drive (data storage appliance; see also Examiner's arguments disclosed supra regarding claim 1) (Symantec, p. 38) such that the image on the CD-R/RW can be loaded onto a hard drive at any time (Symantec, p. 31). The copying of data from the hard disk to the CD-R/RW disk in the CD-ROM (data storage appliance) (claim 1), and the copying of data from the CD-R/RW disk in

the CD-ROM (data storage appliance) to the hard disk, are both performed by the program (Ghostpe.exe) that is automatically loaded at startup by the computer. As stated previously by the Examiner in reference to claim 1, this program is executed from the program appliance (boot disk) for copying data between the hard disk and the data storage appliance without the installation of a copy of itself to the hard disk. Thus the Symantec reference teaches the limitations as claimed.

Regarding claim 7, the Applicant argues on pages 11-12 that the Symantec reference fails to recite "wherein the program is further configured to execute automatically upon the program appliance being attached to the computer". The Applicant makes the same arguments for claim 7 that were previously recited for claim 3. Therefore, the Examiner will recite the same Symantec recitations that teach the subject matter as claimed. The Applicant appears to contend that the program is executed just after the program appliance has been attached to the computer. In essence, the Applicant has argued that the program executes not just automatically, but *immediately*, after the program appliance has been attached to the computer (emphasis added). The Examiner would like to point out that such an interpretation would introduce a timeline into the claim interpretation, where on its face claim 3 recites that the program is executed automatically but does not recite a time-related limitation. The program of Symantec is executed automatically when the computer is started, where the boot disks (program appliances) had been previously inserted into the computer

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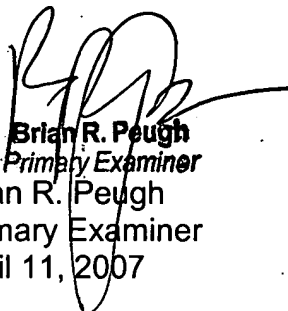
(Symantec. p. 26), as previously recited in Examiner's Office Action. Thus the Symantec reference teaches the limitations as claimed.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

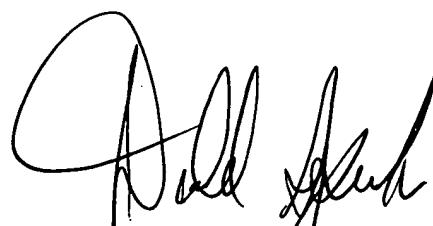
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

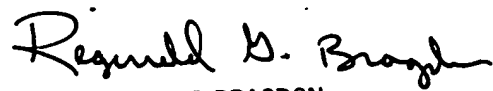

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